

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

MINNESOTA DEPARTMENT OF HEALTH

In the Matter of
Good Shepherd Lutheran Home
Standard Survey completed
September 18, 2009

PROTECTIVE ORDER

On February 5, 2010, Good Shepherd Lutheran Home ("Provider") requested a Protective Order in the above-captioned matter limiting disclosure of protected health information ("PHI") as defined by rules promulgated or to be promulgated by the United States Department of Health and Human Services, including the Privacy Rules (45 C.F.R. Parts 160 and 164), the Standards for Electronic Transactions (45 C.F.R. Parts 160 and 162), and the Security Standards (45 C.F.R. Part 142) (collectively, "Standards") pursuant to the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-1329d-8 ("HIPAA"), closing the IIDR meeting in this proceeding, and sealing the IIDR meeting record, as necessary, in order to maintain the confidentiality of the PHI.

Based upon all the files and proceedings, it is appropriate to issue a Protective Order. This Order is issued pursuant to Minn. Stat. § 14.60, subd. 2 and Minn. Rules pt. 1400.6700, subp. 4. This Order prohibits the disclosure of PHI disclosed by Good Shepherd Lutheran Home, to persons not bound by this Protective Order, as set forth below.

Therefore, the Administrative Law Judge hereby enters the following:

ORDER

1. Disclosure of PHI is permitted in this matter but is limited to the undersigned Administrative Law Judge, employees of the Department of Health, the Provider and its employees, counsel of record, employees and or consultants assisting counsel in preparation of the case, witnesses from whom affidavits have been obtained or otherwise appear and speak at the IIDR meeting and other persons to whom the PHI must be disclosed in order to adequately prepare for the IIDR meeting on this matter.

2. "Data subject to this Protective Order" includes data that the Provider must consider PHI, subject to HIPAA, and includes private and confidential data contained in the following documents: the contents of the Minnesota Department of Health case file; documents and records that become a part of the record of the IIDR meeting, including any written submissions allowed by the Administrative Law Judge; the transcript and or digital recording of the IIDR meeting; the recommended decision of the Administrative Law Judge; and the final decision of the Commissioner of Health.

3. PHI specifically includes, but is not limited to, the identity of persons cared for by Provider whose care and treatment were reviewed by surveyors of the Minnesota Department of Health and are the subject of the IIDR meeting and the information that relates to the past, present or future physical or mental condition of those persons.

4. Data identifying persons described in Paragraph No. 3, above, shall not become public or not confidential by virtue of having been submitted to this proceeding and shall remain confidential after the conclusion of this proceeding. In preparation for and during the IIDR meeting, the parties may refer to names of individuals involved and will have access to documents containing PHI. Unless the Administrative Law Judge determines that it is in the best interest of the persons described in Paragraph No. 3 above, the record will not be sealed. The Administrative Law Judge's Recommendation and the Commissioner's Order will use non-identifying initials or aliases in place of the names of any persons described in Paragraph No. 3, above.

5. The IIDR meeting in this matter is presumed open. If there is testimony by or about persons described in Paragraph No. 3, above, that portion of the meeting will be closed. If a transcript is ordered, the names of the persons described in Paragraph No. 3, above, will be redacted and replaced by non-identifying initials or aliases.

6. The data encompassed by this Order may be used only in this proceeding and not for any other purpose including collateral litigation, unless otherwise ordered by a court of law.

7. Any person bound as described by this Protective Order in Paragraph No. 1, above, is prohibited from disclosing any of the data subject to this Protective Order to anyone other than those persons identified in Paragraph No. 1, above, and is subject to all appropriate sanctions and remedies (including contempt) for any violation of this Order.

8. Nothing in this Order will prevent any party from disclosing material that it has produced to any other person or otherwise restrict the use of such material by the party producing it. Such disclosure will not be deemed to waive or otherwise modify the protection or confidentiality provided in this Protective Order.

9. Upon the close of all proceedings subject to or related to this matter, each party will be entitled to retain copies of the documents filed with the Administrative Law Judge containing PHI, but copies of such documents will be used solely for the purpose of preserving a file on this action and will not be disclosed to any other person.

10. After conclusion of this matter, this Protective Order will continue to be binding on the parties who have agreed to be bound by this Protective Order's terms.

Dated: February 9, 2010

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge